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October 5, 2011

VIA ELECTRONIC FILING

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D. C. 20423

Dear Ms. Brown:


This refers to STB Finance Docket No. 35087, Canadian National Railway Company and Grand Trunk Corporation--Control--EJ&E West Company, and the Decisions of the Board, served December 24, 2008, and October 23, 2009.

Attached is a copy of the Status Report of the Illinois Department of Transportation.

A copy of this letter and of the Status Report this day was transmitted by e-mail to counsel for the applicants, Paul A. Cunningham, Esq.

If you have any question concerning this filing or I otherwise can be of assistance, please let me know.

Sincerely yours,


Fritz R. Kahn

cc: Paul A. Cunningham, Esq.

Office of Proceedings

OCT 05 2011

Part of
Public Record

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 35087

CANADIAN NATIONAL RAILWAY COMPANY AND GRAND TRUNK
CORPORATION--CONTROL--EJ&E WEST COMPANY

STATUS REPORT
OF
ILLINOIS DEPARTMENT OF TRANSPORTATION

By its Decision, served December 24, 2008, the Board provided for grade-separated crossings at Ogden Avenue (U.S. Highway 34) in Aurora, IL, and Lincoln Highway (U.S. Highway 30) in Lynwood, IL. Pursuant to Condition No. 14, 67% of the cost of the former was to be borne by Canadian National Railway Company ("CN") and 78.5% of the cost of the latter, provided that the construction contracts will have been signed and construction initiated under the supervision of the Illinois Department of Transportation ("IDOT") no later than 2015.

IDOT on September 21, 2009, filed its Petition to Reopen requesting that, in lieu of the 2015 deadline date, the construction contracts be signed and construction initiated seven years from the final unappealable order of the reviewing court. By its Decision, served October 23, 2009, the Board denied IDOT's request on the ground that it was premature. Nevertheless, the Board said:

[W]e recognize that IDOT has raised legitimate concerns about the difficulty of meeting the 2015 date for the initiation of construction when court litigation related to Condition No 14 may go on for some time. Therefore, we note that, if reasonable progress has been made, yet it becomes clear that construction is not likely to be initiated by 2015 due to circumstances beyond IDOT's control, such as a long appeals process, the Board will

entertain requests to extend the time deadlines of Condition No. 14 at that time.

The U.S. Court of Appeals for the District of Columbia Circuit affirmed the Board's Decisions by its Opinion, served March 15, 2011, in Case No. 09-1002, Village of Barrington, Illinois v. Surface Transportation Board, et al., ___ F. 3d ___, 2011 WL 869904.

IDOT believes it needs to keep the Board informed of the progress being made in the planning for the construction of the two grade-separated crossings and intends to do so by filing status reports from time to time. This is its third one.

Attached are copies of reports prepared by IDOT's Bureau of Programming earlier this year dealing respectively with the preliminary planning for the grade-separated crossings in Aurora and Lynwood.

IDOT has engaged URS as its consultant for the Aurora project and V3 for the Lynwood project. Attached are copies of URS' report, dated July 18, 2011, and V3's report, dated August 2, 2011. The latter is particularly useful in explaining the interests of METRA, Chicago's transit system, and Norfolk Southern Railway in the planning of the two grade-separated crossings.

Finally, attached is an undated letter from Mr. Jim Vena, Senior Vice President, Southern Region of CN, expressing his concerns about the early estimates of the cost for the construction of the grade-separated crossings at Aurora and Lynwood.

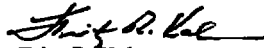
Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTATION

By its attorneys,

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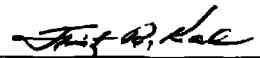

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Dated: October 5, 2011

CERTIFICATE OF SERVICE

The foregoing Status Report was served upon Canadian National Railway Company and Grand Trunk Corporation by e-mailing a copy to their attorney, Paul A. Cunningham, Esq., at pac@harkinscunningham.com.

Dated at Washington, DC, this 5th day of October, 2011.


Fritz R. Kahn

~ US Route 34 at the EJ&E/CN Railroad ~
City of Aurora
DuPage County
P-91-002-10

This study is still on schedule and targeted for an early fall Design Approval. To keep this study on schedule a preferred alternative must be selected by the Project Study Group (PSG) in time to prepare for a late summer Public Hearing. The PSG is comprised of IDOT, FHWA and the CN.

Supplement

URS has submitted a supplement for additional work identified during the Phase I study.

Cost Estimate

Preliminary cost estimates have been prepared for the roadway overpass and underpass alternatives. They are in the process of being refined.

Environmental (1 addendum has been processed)

- Clearances are expected in time to receive a fall DA.

Hydraulics

- Approval is expected in time to receive a fall DA.

Alternatives

Alternatives have been developed and narrowed to the two most viable alternatives plus the no-build. These alternatives are a roadway overpass and a roadway underpass without adjusting the profile of the CN tracks. All alternatives studied and selection criteria were presented at the most recent public meeting. A PSG brainstorming session on April 5, 2011 helped to develop a comprehensive list of selection criteria for selecting a preferred alternative. URS (US 34 study), V3 (US 30 study), CN and IDOT (various sections) will take part in this workshop to develop the selection criteria. The results of this workshop were presented at the April FHWA/BDE/D1 Coordination meeting.

Metra

Metra submitted a request to the CN on 09/15/10 requesting them to run an operational simulation based on Metra's operating assumptions to better understand what additional railroad infrastructure that would be required to operate passenger service in the corridor. CN responded to Metra with draft hours and scope necessary to perform the work, but Metra has neither agreed nor commented on the hours and scope.

Utility Coordination

Coordination is ongoing. A SUE study was performed/received. The consultant has prepared summary of impacts for each of the alternatives. Additional information is needed from Nicor and Com Ed to refine our estimated costs. Regardless of which alternative is chosen a Com Ed access drive will be cut off when we grade separate. An alternative access off of McCoy Drive south to their facility has been selected as the new access drive. A supplement is being prepared to cover unanticipated engineering costs associated with this work.

Land Acquisition

A preliminary summary of potential ROW impacts for each alternative were prepared and submitted to the Bureau of Land Acquisition. The Bureau of Land Acquisition put in a request to pull titles on 3/22/11. Titles have begun to come in.

Public Involvement

The second public meeting was held on March 10, 2011. The meeting was attended by 68 people and 25 comments were received during the comment period. Of the comment cards received there is a preference that the underpass alternative is selected as the preferred alternative. The PSG will determine the preferred alternative and present it at a fall Public Hearing.

~ **US Route 30 at the EJ&E/CN Railroad** ~
Village of Lynwood
Cook County
P-91-003-10

This study is still on schedule and targeted for a fall design approval (DA). To keep this study on schedule a preferred alternative must be selected by the Project Study Group (PSG) in time to prepare for an early fall Public Hearing. The PSG is comprised of IDOT, FHWA and the CN.

Supplement

Supplement 2 is being developed to adjust funding already identified in the prime agreement

Cost Estimate

Preliminary cost estimates have been prepared for the roadway overpass and underpass alternatives. They are in the process of being refined.

Environmental (1 addendum has been processed)

- Clearances are expected in time to receive a fall DA

Hydraulics

- Approval is expected in time to receive a fall DA.

Alternatives

Alternatives have been developed and narrowed to the two most viable alternatives plus the no-build. These alternatives are a roadway overpass and a roadway underpass without adjusting the profile of the CN tracks. All alternatives studied and selection criteria were presented at the 03/30/11 public meeting

A PSG brainstorming session was held on April 5, 2011 to develop a comprehensive list of selection criteria for selecting a preferred alternative. URS (US 34 study), V3 (US 30 study), CN and IDOT (various sections) took part in this workshop to develop the selection criteria. The results of this workshop were presented at the April FHWA/BDE/D1 Coordination meeting.

Norfolk Southern Railway Company

The CN and NS have not come to agreement yet, but we are told an agreement is imminent. The 03/30/11 Public Meeting not only presented a grade separation at the CN, but also the footprint of a grade separation if the railroads are unable to come to agreement.

Metra

Our current design would accommodate an additional track in the future in the case Metra moves forward in their study and comes to agreement with the CN to operate within their ROW.

Utility Coordination

Coordination is ongoing. A SUE study was performed/received. Individual meetings held on 03/22/11 & 03/24/11 with each utility company. V3 is compiling, interpreting and summarizing the information collected at these meetings. V3 will provide a summary to IDOT with recommendations and locations where impacts could be avoided

Land Acquisition

A preliminary summary of potential ROW impacts for each alternative were prepared and submitted to the Bureau of Land Acquisition. The Bureau of Land Acquisition put in a request to pull titles on 3/08/11. Titles have begun coming in.

Public Involvement

The second public meeting was held on 03/30/11. This fall a public hearing will be scheduled.

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Technical Memorandum

Date: July 18, 2011
To: Jessica Feliciano - IDOT
From: Donald Yetter - URS
Project: US Route 34 at EJ&E/CN Grade Separation
IDOT Project P-91-002-10, PTB/Item#: 153 / 1
DuPage County

The following information is being provided for use in developing a status report on the progress of the US Route 34 at EJ&E/CN Grade Separation Project at Aurora, Illinois for filing with the NSTB:

We understand a briefing paper was prepared by the IDOT Bureau of Programming for the US 34 Project.

URS Corporation is the prime consultant for the US 34 Project.

Over the course of Phase I Preliminary Engineering and Environmental Studies for the US 34 Project, four separate meetings have been conducted with CN. Three of those meetings were joint meetings for both the US Route 34 Project in Aurora and the US Route 30 Project in Lynwood.

Over the course of Phase I, one separate meeting was conducted with Metra for the US 34 Project. An additional joint Metra and CN meeting was also conducted for both the US Route 34 and the US Route 30 Grade Separation Projects. Metra has an interest in the US Route 34 Grade Separation Project because the first phase of its proposed STAR Line would place commuter rail service within the EJ&E/CN corridor at the project location. Though no station has been proposed for commuter service at the US 34 Project, Metra is concerned that additional tracks that would be needed for its project not be precluded by construction of a grade separation.

Three Community Advisory Group Meetings have also been conducted with CN attending each of them in the role of an observer and Metra attending each as a participant.

Two Public Meetings have been conducted with CN attending both. Metra also attended the first public meeting.

Thus far eight Project Study Group meetings with the IDOT Bureau of Design and Environment (BDE) and FHWA have been conducted for the US Route 34 Project. CN was provided invitations to attend two of those meetings but chose to not attend.



MEMORANDUM

DATE August 2, 2011
TO Andy Rabadi, Railroad Coordinator, IDOT
FROM David Heslinga, V3 Companies
CC Project Files
RE U S Route 30 at the EJ&E/CN Railroad

The purpose of this memorandum is to provide background of coordination efforts with the CN, Norfolk Southern (NS) and Metra on the US Route 30 grade separation project at the EJ&E/CN Railroad for IDOT's use in filing a status report with the STB. V3 Companies of Illinois Ltd. has been IDOT's consultant during the conduct of this study. At the project inception, a Project Study Group (PSG) was formed consisting of the FHWA, IDOT and CN. The PSG has met five times during the study process to coordinate development of grade separation alternatives. The CN has been invited to PSG meetings but has not attended to date. The CN has attended and participated in the two public meetings held for the US Route 30 project.

Metra has been conducting a long range planning study over the last several years evaluating the potential for commuter rail service on the EJ&E/CN tracks between Joliet and Northwest Indiana. There have been two meetings held with Metra during the study to coordinate their planning efforts with grade separation alternatives. In order to not preclude the potential for commuter rail service in the future, the span of the US 30 overpass structure will be designed to accommodate a third track for Metra in the event they reach an agreement with the CN to operate commuter service within the CN right of way and decide to move forward with this service.

The NS has a single track crossing of US Route 30 located approximately 380 feet north of the CN crossing. This NS track is currently inactive. Since a grade separation at the CN crossing will change the roadway profile at the NS crossing, there has been two coordination meetings held with the NS. The purpose of these meetings has been to keep them informed of study efforts and to assist the railroads in reaching an agreement to abandon the NS crossing and shift NS train operations to the CN tracks. We have been told by the CN that an agreement between the two railroad companies is imminent.



www.cn.ca

Ms. Jessica A. Feliciano, P.E.
Project Manager
IDOT Bureau of Programming
201 West Center Court
Schaumburg, IL 60196

Dear Ms. Feliciano:

CN received from you on June 8, 2011, preliminary IDOT estimates for the planned grade separations at U.S. 34 (Ogden Avenue) in Aurora and U.S. 30 (Lincoln Highway) in Lynwood. As you know, these separations were required by the Surface Transportation Board (STB) as a condition to its December 24, 2008 approval of CN's acquisition of the major portion of the Elgin, Joliet & Eastern Railway Company (EJ&E). Pursuant to the STB's decision, CN is to bear 67 percent of the costs of the separation at Ogden Avenue, 78.5 percent for the separation at Lincoln Highway.

We understand that the cost estimates you provided are preliminary estimates entered for budgeting and programming purposes and that more detailed estimates will be forthcoming in July. We are very concerned, however, with the estimates presented. The Final Environmental Impact Statement (FEIS) that supported the STB's approval decision "estimate[d] that the Ogden Avenue (US 34) grade separation would cost \$40.4 million and the Lincoln Highway (US 30) grade separation would cost \$52.5 million," for a total of approximately \$93 million. Under the cost-sharing formula imposed by the STB and based on those estimates, CN would bear approximately \$68 million of the costs of the separations. Nothing else in the FEIS or the STB's approval decision signaled a markedly different result. Accordingly, CN completed the EJ&E transaction with the reasonable expectation that its approximate exposure for the cost of the separations would be in line with the FEIS estimates.

The June 8 IDOT estimates, however, lists the projected costs of the separations as \$74.5 million for Ogden Avenue and \$74 million for Lincoln Highway, totaling \$148.5 million. CN's share under the STB's formula would be approximately \$108 million, exceeding the STB estimates by \$40 million, or almost 60%. Even recognizing that IDOT's estimates are very preliminary and that the FEIS estimates would be reasonably adjusted for inflation over the intervening years since the STB's decision, the difference remains troubling.

Southern Region

Jim Vena
Senior Vice President, Southern Region

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As the STB noted, the purpose of its grade separations condition is solely to mitigate transaction impacts, not remedy pre-existing conditions or other concerns at CN's expense. We believe that CN and IDOT have common interests in satisfying that purpose by constructing the separations as economically as possible. We look forward to receiving and reviewing the more detailed project cost estimates later in July, and plan to work with you vigilantly in efforts to contain the costs closer to those estimated by the STB.

We appreciate the constructive CN/IDOT discussions that have taken place to date on these two grade separations. Please do not hesitate to contact me if you have any questions regarding CN's concerns.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Vena", written in a cursive style.

Jim Vena